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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,306	09/30/2003	Jorge F. Escobar	HSJ920030204US1	5363

50726 7590 05/02/2006

DILLION & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY.
SUITE 2110
AUSTIN, TX 78759

EXAMINER	
SNIEZEK, ANDREW L	

ART UNIT	PAPER NUMBER
2627	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/675,306	ESCOBAR ET AL.	
	Examiner	Art Unit	
	Andrew L. Sniezek	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-10* is/are allowed.

6)☒ Claim(s) *11-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The following action is taken in view of the amendment filed 1/4/06.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 11, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottesen et al.

Re claims 11: Ottesen et al. teaches a disk drive arrangement and corresponding method of operation in which a temperature of the drive is monitored in relation to a desired temperature (threshold) column 6, lines 50-64 and controls a disk spindle speed to cool the drive if the threshold temperature is exceeded. Claim 11 additionally sets forth that the controlling method occurs for a drive to be tested. The testing feature is satisfied by the arrangement of Ottesen et al. at least by the temperature testing arrangement as disclosed. The claimed switching back between the modes although not specifically discussed in Ottesen et al., such a feature would have been obvious to one of ordinary skill in the art at the time of the invention given the teaching of Ottesen et al. since there would be no need to maintain a slow speed of operation if the disk drive is below a given temperature and therefore would have been obvious to increase the speed of rotation to allow for an increase in recording/reproducing speed.

Concerning the limitations of claim 14: clearly one of the rotational speeds is slower

than the other. The claimed clock speed as set forth in claim 15 is deemed satisfied by the arrangement of figure 2 that includes a motor control (210, 205 and 202) that is used to provide appropriate signals to control speed of rotation of the spindle.

4. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottesen et al. in view of Francis et al.

The teaching of Ottesen et al. is discussed above and incorporated herein. Claims 12-13 additionally set forth to change the seek modes based on the temperature. Although this feature is not taught by Ottesen et al. such is well known as taught by Francis et al. (see for example abstract) to maintain a temperature within a safe level. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporated the teaching of Francis et al. in the arrangement of Ottesen et al. such that while monitoring a temperature in a seek speeds are changed to maintain a safe temperature range of the drive.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 16-20 are drawn to a "program" *per se* as recited in the preamble and as such is non-statutory subject matter. See

MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's

functionality to be realized. The term "residing" claim 16, line 1 is not considered have the same meaning as "embodied".

Allowable Subject Matter

7. Claims 1-10 are allowed over the prior art of record for the combination of each of the reasons as provided by applicant in the response filed 1/4/06.

Response to Arguments

8. Applicant's arguments filed 1/4/06 have been fully considered but they are not persuasive. Concerning claim 11: There is no specifics in the body of the claim that define the "testing" as set forth by the preamble, therefor very little weight is given to such preamble limitation. Concerning the rejections related to 35 U.S.C. 101: This rejection can be overcome by changing the preamble of claim 16 from "A computer program product, residing on a computer usable medium" to - - A computer program product, embodied on a computer readable medium - -.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew L. Sniezek whose telephone number is 571-272-7563. The examiner can normally be reached on Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa Nguyen can be reached on 571-272-7579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew L. Sniezek
Primary Examiner
Art Unit 2627

A.L.S.
4/29/06